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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,293	12/18/2001	Masanori Ayabe	350292001100	1682
25227	7590	03/25/2004	EXAMINER	
MORRISON & FOERSTER LLP 1650 TYSONS BOULEVARD SUITE 300 MCLEAN, VA 22102				HAAS, WENDY C
		ART UNIT		PAPER NUMBER
		1661		

DATE MAILED: 03/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/018,293	AYABE ET AL.	
	Examiner	Art Unit	
	Wendy C Haas	1661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 19 December 2003.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-5 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-5 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 18 December 2001 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ayabe et al. in view of Verbeek et al.

Ayabe et al. teach a method of culturing *Allium sativum* plants from a stem disc explant that forms a dome-shaped tissue in the absence of plant hormones. Ayabe et al. further teach that this method can be used to create virus-free plants. Finally, Ayabe et al. teach that the basal part of the foliage leaf also appeared to be an excellent explant for producing *in vitro* shoots in a preliminary experiment.

Ayabe et al. do not teach culture of a foliage leaf base to form a “domy tissue” or the use of a virus-infected explant.

Verbeek et al. teach that methods to eradicate viruses from infected garlic tissues through tissue culture are known in the art.

Ayabe et al. note that *in vitro* shoots progressively developed from the stem disc explant, beginning as “domy tissue” at one week of culture and progressing without interference to *in vitro* shoots at three weeks of culture. Ayabe et al. also note that electron microscopy revealed that “development of the *in vitro* shoots was restricted to regions surrounded by the basements of foliage leaves.”

A person of ordinary skill in the art would be motivated to use Ayabe et al's method of stem-disc culture with a virus-infected basal leaf explant the generate virus-free plants because Ayabe et al. noted the leaf base is an effective explant and garlic bulbs contain more basal leaf material so more plants could thus be produced. Further, Ayabe et al. state (page 779) that their method "is of practical use for the micropropagation of garlic plants, in particular as virus-free seed plants produced by shoot-tip culture." Ayabe et al. note that one major advantage to the method is its applicability to large scale cultivation.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent Number 06197650 A in view of Ayabe et al. as modified by Verbeek et al.

The Japanese Patent teaches a method of culturing *Allium sativum* plants from a leaf base explant in a hormone-free medium.

The teachings of Ayabe et al. and Verbeek et al. are set forth above.

The Japanese Patent abstract does not teach culture of a foliage leaf base to form a "domy tissue", a specific thickness of explant in millimeters, or generation of virus-free plants.

A person of ordinary skill in the art would be motivated to use the method of Japanese Patent Number 06197650 A to culture virus-free plants from callus (domy tissue) because Ayabe et al. noted the leaf base is an effective explant and that tissue culture is an excellent method for virus eradication in garlic.

Comments

Applicant argues in the Remarks provided in response to the Office Action that the cited references do not teach or suggest virus eradication. Abyabe et al. do suggest this on page 779, and this is the subject of the newly cited reference, Verbeek et al. as well. While Ayabe et al. note that virus-infected plants do not propagate as easily, there are many reasons why one of ordinary skill in the art might not be dissuaded by such a statement. For example, a artisan might wish eradicate a virus infection from a single, newly-bred specimen in order to develop a promising new cultivar.

Conclusion

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wendy C Haas whose telephone number is (571) 272-0976. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on (571) 272-0974. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

W. C. Haas



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